

AMENDED IN SENATE JULY 3, 1996
AMENDED IN SENATE JUNE 20, 1996
AMENDED IN ASSEMBLY MAY 14, 1996
AMENDED IN ASSEMBLY MAY 2, 1996
AMENDED IN ASSEMBLY APRIL 16, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2400

Introduced by Assembly Member Miller

February 16, 1996

An act to amend Section ~~20303~~ of 20502 of, and to add Section 20306 to, the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, as amended, Miller. Public employees: local retirement systems.

~~Existing~~

(1) *Existing* law provides that classified school employees are members of the Public Employee's Retirement System. ~~Existing law~~ and authorizes local agencies, including school districts, to establish pension trusts for the benefit of their officers and employees.

This bill would provide that represented part-time school and public agency employees may elect to participate in—~~a~~ *an alternate retirement plan established as a* pension trust in accordance with a memorandum of understanding and that

~~participation of unrepresented part-time employees would be subject to the sole discretion of the employer eligible to elect to participate in the alternate retirement plan.~~

(2) The Public Employees' Retirement Law authorizes contracting agencies and the retirement board to agree to exclusions of groups of employees from contracts for system coverage.

This bill would provide that those contracts could not provide for exclusion of some, but not all, firefighters, police officers, or county peace officers and would make a statement of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 20303 of the Government Code~~
 2 SECTION 1. Section 20306 is added to the
 3 Government Code, to read:
 4 20306. (a) Notwithstanding paragraph (1) of
 5 subdivision (a) of Section 20305, an employee
 6 participating in this system, other than a local safety
 7 member, who is credited with less than five years of state
 8 service and whose service falls below the minimum
 9 service prescribed by paragraph (2) of, or subparagraph
 10 (A) or (B) of paragraph (3) of, subdivision (a) of Section
 11 20305 and who is eligible for membership in an alternate
 12 retirement plan established or maintained by the county
 13 superintendent of schools or the public agency pursuant
 14 to Article 1.5 (commencing with Section 53215) of
 15 Chapter 2 of Part 1 of Division 2 of Title 5, may elect to
 16 participate in that system in accordance with a
 17 memorandum of understanding executed between the
 18 public agency and the exclusive bargaining
 19 representative of the employee if the employee is
 20 represented. That memorandum of understanding shall
 21 prescribe all of the terms and conditions under which the
 22 alternate plan is established including the employer and
 23 employee contribution rates.

1 (b) An employee who is employed on the effective
2 date of the establishment of an alternate retirement plan
3 that is established after January 1, 1997, and who is not
4 represented by an exclusive bargaining representative
5 shall participate in the alternate retirement plan
6 whenever his or her employment falls below the
7 requirements prescribed by Section 20305 if he or she has
8 elected to participate in the alternate retirement plan.

9 (c) A member who was employed on January 1, 1997,
10 by an employer that has established an alternate
11 retirement plan prior to January 1, 1997, shall participate
12 in the alternate retirement plan whenever his or her
13 employment falls below the requirements prescribed by
14 Section 20305 if the member elects to participate in the
15 alternate retirement plan on or before April 1, 1997.

16 (d) An employee's participation in the alternate
17 retirement plan shall commence as soon as it is reasonable
18 prior to the commencement of the fiscal year subsequent
19 to the election to participate whenever his or her
20 employment falls below the requirements prescribed by
21 Section 20305 and shall continue until the time that the
22 employee's employment meets those requirements,
23 whereupon the employee shall reenter membership in
24 the system.

25 (e) The election to participate in the alternate
26 retirement plan shall be subject to the following
27 requirements:

28 (1) The employer shall make available to each
29 employee on January 1, 1997, or at least 90 days prior to
30 the proposed effective date of the alternate retirement
31 plan, whichever is later, information describing the
32 employee's rights and responsibilities as a participant in
33 either this system or the alternate retirement plan
34 offered by the employer and describing the benefits
35 provided by this system and that alternate retirement
36 plan. The information shall include all of the terms and
37 conditions under which the system and the alternate
38 retirement plan are established including the employer
39 and employee contribution rates.

(2) A member of this system subject to subdivision (c) who fails to make an election prior to April 1, 1997, shall be informed by the employer by certified mail that the failure to make that election has been deemed an election to participate in the alternate retirement plan whenever his or her employment falls below the requirements prescribed by Section 20305.

(3) The employer shall maintain in its files a written acknowledgement by the employee that the employee received the information required under this section within the specified timeframe and shall maintain election results and election forms of employees.

(4) The employer shall notify the system as to the results of elections by employees in the manner prescribed by the system.

SEC. 2. Section 20502 of the Government Code is amended to read:

20502. The contract shall include in this system all firefighters, police officers, county peace officers, and other employees of the contracting agency, except as exclusions in addition to the exclusions applicable to state employees may be agreed to by the agency and the board. The contract shall not provide for the exclusion of some, but not all, firefighters, police officers, or county peace officers. The exclusions of employees, other than firefighters, police officers, or county peace officers, shall be based on groups of employees such as departments or duties, and not on individual employees, ~~and the~~. The exclusions of groups may be made by amendments to contracts, with respect to future entrants into the group. The board may disapprove the exclusion of any group, if in its opinion the exclusion adversely affects the interest of this system. Membership in this system is compulsory for all employees included under a contract. This section shall not be construed to supersede Sections 20303 and 20305.

SEC. 3. The Legislature hereby declares that the intent of the amendments to Section 20502 of the Government Code by this act is to clarify the conditions under which part-time employees who are firefighters,

1 *police officers, or county deputy sheriffs are included in*
2 *or excluded from membership in the Public Employees'*
3 *Retirement System. In clarifying the conditions for*
4 *membership, it is further the intent of these amendments*
5 *to neither include nor exclude a part-time firefighter,*
6 *police officer, or county deputy sheriff employee on any*
7 *basis other than conditions prescribed by the Public*
8 *Employees' Retirement Law and the regulations in effect*
9 *on January 1, 1997.*

10 *is amended to read:*

11 ~~20303. (a) Persons who are members of any other~~
12 ~~retirement or pension system supported wholly or in part~~
13 ~~by funds of the United States government, any state~~
14 ~~government or political subdivision thereof and who are~~
15 ~~receiving credit in the other system for service are, as to~~
16 ~~that service, excluded from this system.~~

17 ~~(b) Notwithstanding paragraph (1) of subdivision (a)~~
18 ~~of Section 20305, an employee participating in this system~~
19 ~~whose service falls below the minimum service~~
20 ~~prescribed by paragraph (2), or subparagraph (A) or (B)~~
21 ~~of paragraph (3) of subdivision (a) of Section 20305 and~~
22 ~~who is eligible for a retirement system established or~~
23 ~~maintained by the county superintendent of schools or~~
24 ~~the public agency pursuant to Article 1.5 (commencing~~
25 ~~with Section 53215) of Chapter 2 of Part 1 of Division 2 of~~
26 ~~Title 5, may participate in that system in accordance with~~
27 ~~a memorandum of understanding executed between the~~
28 ~~public agency and the exclusive bargaining~~
29 ~~representative of the employee. If the employee is not~~
30 ~~represented by an exclusive bargaining representative,~~
31 ~~the employer shall have sole discretion to determine what~~
32 ~~retirement plan or system in which the employee shall~~
33 ~~participate, according to the terms of those plans. That~~
34 ~~participation shall begin in the first year following the~~
35 ~~fiscal year in which the employee's service first falls below~~
36 ~~the standards in the sections cited in this subdivision and~~
37 ~~shall continue until the time that the employee's~~
38 ~~employment meets those standards, whereupon the~~
39 ~~employee shall reenter this system. This subdivision shall~~
40 ~~not apply to safety members.~~

1 ~~(c) For the purpose of this section, persons who~~
2 ~~merely are receiving pensions or retirement allowances,~~
3 ~~or other payments, from any source whatever, on account~~
4 ~~of service rendered to an employer other than the state~~
5 ~~and while they were not in state service, are not, because~~
6 ~~of that receipt, members of any other retirement or~~
7 ~~pension system.~~

8 ~~(d) For the purposes of this section only, persons who~~
9 ~~merely participate in a deferred compensation plan~~
10 ~~established pursuant to Chapter 4 (commencing with~~
11 ~~Section 19993) of Part 2.6 of Division 5 of Title 2 or~~
12 ~~established pursuant to Article 1.1 (commencing with~~
13 ~~Section 53212) of Chapter 2 of Part 1 of Division 2 of Title~~
14 ~~5, are not, because of that participation, members of any~~
15 ~~other retirement or pension system.~~

16 ~~(e) For the purposes of this section only, persons who~~
17 ~~participate in a money purchase pension plan and trust~~
18 ~~that meets the requirements of Section 401(a) of Title 26~~
19 ~~of the United States Code are not, because of that~~
20 ~~participation, members of any other retirement or~~
21 ~~pension system, so long as the contracting agency has~~
22 ~~received a ruling from the Internal Revenue Service~~
23 ~~stating that the money purchase pension plan and trust~~
24 ~~qualifies under Section 401(a) and furnishes proof~~
25 ~~thereof upon request by the board.~~